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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,375	02/07/2001	Mattias Schmidt	8414Q	6856

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,375

Applicant(s)

SCHMIDT ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10, 11 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1 and 10 – 15 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim I is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson (WO 98/31402).

With respect to claim 1, Robinson discloses an absorbent article comprising a liquid impervious backsheet (3), a liquid pervious topsheet (2) joined to the backsheet (figure 1), an absorbent core disposed intermediate the topsheet and the backsheet (6) and a phase change material (5) disposed on at least a portion of the article as set forth on page 2, lines 4 – 7.

The difference between Robinson and claim 1 is the provision that the phase change material is used at a basis weight of at least about 100gsm.

It would have been obvious to one of ordinary skill in the art to modify the amount of phase change material used in order to provide the most effective product since it

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has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

The examiner also notes that it is well known in the art that the claimed amount of phase change material is desirable for use because at lower basis weights the integrity of the article is improved while permitting one to select a dressing of desired absorbency and minimizing the danger of dessicating the wound. The lower basis weights are also cost effective. Further, the higher basis weights are not as supple as would be desired and are more likely to dessicate the wound.

Claims 1, 10 – 11 and 14 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasse (US 5,591,146).

With respect to claim 1, Hasse discloses an absorbent article comprising a backsheet (26), a liquid pervious topsheet joined to the backsheet (24), an absorbent core disposed intermediate to the topsheet and the backsheet (28), and a phase change material (89) disposed at least on a portion of the article as set forth in figure 2.

The difference between Hasse and claim 1 is the provision that the phase change material is used at a basis weight of at least about 100gsm.

It would have been obvious to one of ordinary skill in the art to modify the amount of phase change material used in order to provide the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

As to claim 10, Hasse discloses an absorbent article wherein the thermal cell actuator is removable from the article as set forth in col. 10, lines 35 – 39 and figure 2.

The thermal cell actuator, or microcapsules, are removable from the article upon the removal of the release liner which releases the perfume from the microcapsules.

As to claim 11, Hasse discloses the thermal cell actuator being attachable to the article as set forth in col. 7, lines 11 – 16. The attachment system which houses the thermal cell actuator (microcapsules) is taught as being attached to the article via an adhesive layer (90).

With reference to claim 14, Hasse discloses an article wherein the phase change material effects a decrease in malodorous vapors in the article when the phase change material changes phases as set forth in col. 11, lines 5 – 8.

As to claim 15, Hasse discloses an absorbent article wherein the phase change material effects an increase in fragrance in the article when the phase change material changes phases as set forth in col. 11, lines 5 – 8.

Hasse discloses a material that encapsulates a fragrance. As the system is manipulated, the microcapsules are released and change from one phase (encapsulated) to another phase (diffused) as taught by Hasse in col. 8, lines 16 – 18.

As to claim 16, Hasse discloses an absorbent article comprising a liquid impervious backsheet (26), a liquid pervious topsheet joined to the backsheet (24), an absorbent core disposed intermediate to the topsheet and the backsheet (28), and a thermal cell actuator (95,96) disposed on or adjacent to at least on a portion of the

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article to effect a change in at least one property other than temperature in at least a portion of the article as set forth in col. 11, lines 5 – 26.

The thermal cell actuator is in the form of microcapsules that effect malodor of the article upon their release.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (US 5,156,911).

With respect to claim 1, Stewart discloses an absorbent article (col. 4, line 10) comprising a phase change material disposed on at least a portion of the article as set forth in col. 3, lines 49 – 58.

The difference between Stewart and claim 1 is the provision that the absorbent article comprises a liquid impervious backsheet, a liquid pervious topsheet joined to the backsheet and an absorbent core disposed intermediate the topsheet and the backsheet, and the provision that the phase change material is used at a basis weight of at least about 100gsm.

It would have been obvious to one of ordinary skill in the art to provide the absorbent article of Stewart with a liquid pervious topsheet joined to the backsheet and an absorbent core disposed therebetween because Stewart discloses a bandaid as being suitable for use with the invention (col. 4, line 11), and it is well known in the art that the structure of a bandaid, or bandage, encompasses a liquid pervious topsheet joined to a liquid impervious backsheet with an absorbent core disposed therebetween.

Additionally, it would have been obvious to one of ordinary skill in the art to modify the amount of phase change material used in order to provide the most effective

product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

Allowable Subject Matter

Claims 12 – 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed March 31, 2005 with respect to claim 16 has been fully considered but is not considered persuasive. With respect to the applicant's argument that Hasse does not provide a thermal cell actuator, the examiner disagrees. According to page 8, lines 18 – 19 of the instant specification, a thermal cell actuator is defined as actuating the performance of a useful function of an article. Hasse provides perfume to help minimize article odor thereby performing a useful function. The applicant's arguments state that a thermal cell actuator must either generate or remove heat. However, the instant specification states that thermal cell actuators may provide or remove heat (page 9, lines 1 – 4) and that a thermal cell actuator that generates heat is referred to as an "effect-generating thermal cell actuator" (page 9, lines 7 – 8). The specification also states that thermal cell actuators that generate heat are referred to as heat sources (page 9, line 16) and thermal cell actuators that remove heat are referred to as cooling devices (page 13, line 8). Therefore, the examiner finds that the

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applicant's arguments with respect to claim 16 are not commensurate with the claim language.

Additionally, despite previous remarks, the examiner finds no advantage or unexpected results associated with the claimed amount of phase change material. If the applicant proceeds with this line of reasoning, the examiner requests support for the advantages associated with the claimed amount of phase change material.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Cole references are provided as a teaching to the advantages of having the phase change material present in the claimed amount.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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